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**IN THE
COURT OF APPEALS OF INDIANA**

JOY S. ANDERSON,)	
)	
Appellant- Defendant,)	
)	
vs.)	No. 33A05-0605-CV-281
)	
RALPH HASTINGS and)	
DARLENE HASTINGS,)	
)	
Appellees- Plaintiffs.)	

APPEAL FROM THE HENRY SUPERIOR COURT
The Honorable Bob A. Witham, Judge
Cause No. 33D02-0506-SC-810

March 29, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Joy S. Anderson appeals the trial court's order of eviction and small claims damages award in favor of Ralph and Darlene Hastings (the "Hastings"). Anderson claims that the trial court erred in awarding damages because it failed to comply with Indiana's Ejectment and Quiet Title Statute.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 22, 2002, Anderson, as a tenant, and the Hastings, as landlords, entered into a written lease agreement for rental property located in New Castle, Indiana. The term of the lease was from September 1, 2002 through August 31, 2003 with a month-to-month tenancy thereafter. *Appellant's App.* at 10-11. Anderson paid the first and last months' rent equal to \$495.00 per month and moved in. Without ever renewing the original lease, Anderson occupied the rental property for nearly two and a half years.

On March 22, 2005, Anderson sent the Hastings a letter notifying them, pursuant to the lease, that she intended to vacate the rental property. *Id.* at 18. Anderson's roommate, Ed Stanek ("Stanek"),¹ testified that two days after Anderson sent the Hastings their notice, he informed Mrs. Hastings that they no longer intended to vacate the rental property. *Tr.* at 44. Stanek also stated that Mrs. Hastings voiced no objection and was "very happy" that they were not going to leave. *Id.*

¹ Ed Stanek was not listed on the lease, but testified that he had an oral agreement with the Hastings that he was also a tenant, and that after the expiration of the original one-year lease, he and Anderson were under a year-to-year agreement with the Hastings. *Tr.* at 45. In her *Statement of the Facts*, Anderson claims Stanek became a part of the lease once the rental amount rose due to his occupancy, and that he should have been named in the action. However, Stanek cannot be held to the terms of the lease agreement, on which he was not named. *Appellant's Br.* at 6.

On May 20, 2005, Mrs. Hastings sent a letter to Anderson giving her thirty-days notice of their intent to lease the rental property to another tenant, and of their intent to take possession on or before June 30, 2005. *Appellant's App.* at 9. In the letter, Mrs. Hastings notified Anderson that a new tenant had signed a lease and, although Mrs. Hastings had tried to persuade the new tenant to move elsewhere and allow Anderson to stay, the tenant informed Mrs. Hastings that she was going to hold her to the lease agreement. *Id.* Thereafter, the Hastings cashed Anderson's rent check for the month of July 2005.

On June 17, 2005, the Hastings filed an action in small claims court for immediate possession of real estate. *Id.* at 6. After the summons to Anderson² was returned to the clerk as unserved, the trial court held a hearing on June 22, 2005 and issued a prejudgment order for immediate possession. Anderson filed a motion to set aside the order for immediate possession. On July 5, 2005, a hearing was held on Anderson's motion. The trial court vacated its initial order and issued an amended prejudgment order for immediate possession, specifying that Anderson had until midnight on July 31, 2005 to vacate the rental property. After a damage hearing was held, the trial court entered a final order finding that the Hastings were entitled to \$2,019.42 in damages plus court costs. This amount was comprised of the Hastings's attorney fees,³ cleaning and damage repair to the rental property, August rent, with credit given for the last months rent

² The name listed on the summons was "Henderson" not Anderson. *Appellant's App.* at 19. The reason listed for the non-service was "moved." *Id.*

³ The trial court specified that the Hastings's attorney fees were limited to those incurred after Anderson's noncompliance with the July 7, 2005 order. *Appellant's App.* at 49.

Anderson paid at the inception of the lease. Anderson now appeals. Additional facts are added as necessary.

DISCUSSION AND DECISION

We first note that the Hastings failed to file a brief. As such, we are not required to develop arguments on their behalf and may reverse the trial court upon Anderson's *prima facie* showing of reversible error. *Cohoon v. Cohoon*, 770 N.E.2d 885, 890 (Ind. Ct. App. 2002), *vacated in part*. “*Prima facie*, in this context, is defined as ‘at first sight, on first appearance, or on the face of it.’” *Id.* (quoting *Burrell v. Lewis*, 743 N.E.2d 1207, 1208 (Ind. Ct. App. 2001)). Since the trial court entered findings of fact and conclusions, a showing of *prima facie* error requires a showing that the trial court's findings are clearly erroneous. *Id.* (citing *Day v. Ryan*, 560 N.E.2d 77, 84 (Ind. Ct. App. 1990)); *see also* Ind. Trial Rule 52(A). In considering whether a judgment is clearly erroneous, we will not reweigh the evidence or judge the credibility of the witness, but will only consider the evidence and any reasonable inferences therefrom that support the judgment. *Id.* (citing *Hall v. Gainer Bank*, 670 N.E.2d 891, 894 (Ind. Ct. App. 1996), *trans. denied*).

In small claims cases, our standard of review is subject to relevant rules and statutes, which, in effect, limit formality and encourage great deference to the trial court's decision. *Hill v. Davis*, 832 N.E.2d 544, 548 (Ind. Ct. App. 2005). The purpose of a small claims action is to dispense speedy justice between the parties based on substantive law. *Id.*

Anderson claims that the trial court erred in awarding possession of the rental property and damages to the Hastings for various reasons: 1) Anderson was not properly

notified pursuant to IC 32-30-3-2(a) of the Hastings's action or the initial hearing date;⁴ 2) the Hastings were never required to post a bond under IC 32-30-3-6, and Anderson was not permitted to post a bond under IC 32-30-3-8; 3) as required by IC 32-30-3-5, the Hastings were not entitled to possession of the rental property at the time the trial court issued its prejudgment order of possession; 4) damages cannot be assessed under the immediate possession statute unless the damages resulted from a breach of contract that also gave rise to their right of immediate possession, and in this case, it did not; and 5) damages based on an unlawful order are clearly erroneous.

Countering Anderson's argument are the findings of the trial court:

1. In the present case, the parties originally entered into a written lease agreement for a period of one (1) year in August, 2002. Thereafter, the parties did not sign any additional lease agreements but the defendant continued to reside in the leased premises.
2. "In the absence of agreement to the contrary when a tenant holds beyond the expiration of the lease, and the lessor does not treat the tenant as a trespasser by evicting him, the parties are deemed to have continued the tenancy under the terms of the expired lease." [*Myers v. Maris*, 326 N.E.2d 577 (Ind. Ct. App. 1975).]
3. Therefore, pursuant to the terms of the lease, a check-out list which detailed certain charges which would apply when the premises were vacated. Also, pursuant to the terms of the lease, the lessor was entitled to recover expenses incurred in recovery of the leased premises, including court costs and attorney fees.
4. On July 7, 2005, the parties and counsel appeared for a hearing on the defendant's Motion to Set Aside Prejudgment Order for Immediate Possession which has been entered on June 27, 2005. After hearing evidence, the original Order was vacated and an Amended Order was entered. The Amended Order, and the reasons for the Court entering the Amended Order, were fully explained on the record and the parties'

⁴ While service may have been lacking for the first order, the order was vacated and amended at a time when service of process was not an issue. Therefore, we need not address this argument.

counsel were each supplied with a copy of the Order before leaving the courtroom following the hearing. The Amended Order provided that the defendant would vacate the leased premises on or before 11:59 PM on July 31, 2005.

5. Defendant did not vacate the premises until sometime in August, 2005. Defendant admitted that as of February 24, 2006, the keys for the leased premises had not been returned to the plaintiffs. Additionally, the defendant was not present when the check out list was completed by the plaintiffs.
6. The plaintiff shall be entitled to damages in the amount of \$525.00 representing rent for the month of August, 2005, \$767.67 for damages and cleaning, and \$1,221.75 in attorneys [representing what the Court believes to be a reasonable fee for services incurred following the defendant's non-compliance with the Court's Order of July 7, 2005 and the need for the parties to return to Court following said non-compliance], resulting in total damages of \$2,514.42. After application of the \$495.00 damage deposit against this amount, plaintiffs shall be entitled to judgment against the defendant in the amount of \$2,019.42 plus court costs in the sum of \$70.00 and all accruing costs from the date of said judgment.
7. Defendant shall not be entitled to recover on her request for attorney fees.

Appellant's App. at 48-49. Under the terms of the lease, the tenancy became month-to-month after the initial lease term expired. *Id.* at 11.

Anderson first claims that the trial court's July 7, 2005 amended prejudgment order of possession constituted constructive eviction, since she was not allowed to post a bond pursuant to IC 32-30-3-8, and the Hastings were not required to post a bond under IC 32-30-3-6. IC 32-30-3-8(a) states in relevant part:

. . . before final judgment, . . . the defendant may require the return of possession of the property by filing with the court a written undertaking executed by a surety to be approved by the court stating that the defendant is bound in an amount determined by the court sufficient to assure the payment of costs assessed against the defendant for the wrongful detention of the property.

IC 32-30-3-6 states in pertinent part:

A court may not issue an order of possession in favor of a plaintiff other than an order of final judgment until the plaintiff has filed with the court a written undertaking in an amount fixed by the court and executed by a surety . . . in an amount sufficient to assure the payment of any damages the defendant may suffer if the court wrongfully ordered possession of the property to the plaintiff.

Our court has recognized that in small claims actions for the possession of real estate, and specifically with regard to the posting of bonds, the trial court “is not bound by the statutory provisions related to evictions.” *Stout v. Kokomo Manor Apartments*, 677 N.E.2d 1060, 1068 (Ind. Ct. App. 1997). In *Stout*, the court concluded, the small claims judgment on possession was final and “that the trial court properly issued an order of possession in the Landlord’s favor even though the Landlord had not executed a surety under [IC 32-30-3-6].” *Id.*

In this case, the order of possession was not immediate, but rather only vested with the Hastings at the end of July. During the month of July, Anderson had the right to possession and nobody else. In its open court statement, the trial court stated that the matter was left open only for the issue of damages. Following the *Stout* court’s logic, we find that the trial court properly disposed of the issue of possession without requiring a bond from either Anderson or the Hastings because: 1) the action was in small claims court; 2) the Hastings were not granted immediate possession; and 3) the ruling on possession constituted a final judgment.

Next, Anderson contends that the Hastings were not entitled to possession. However, Anderson fails to show how the Hastings breached the lease or why Anderson

was entitled to possession beyond July 31, 2005. *Appellant's App.* at 7, 12. The facts and law stated simply are as follows: 1) the lease was month-to-month; 2) under a month-to-month lease, the Hastings were required to give Anderson thirty days notice to vacate the rental property, *see* IC 32-31-1-4; 3) the Hastings gave notice no later than June 2005; 4) the court specified that the Hastings were entitled to possession on August 1, 2005; 5) Anderson failed to vacate the rental property until sometime in mid August 2005; and 6) damages resulted from Anderson's failure to timely vacate the rental property.

Finally, Anderson's claim that "not one penny" of the damages were due to her holdover period is incorrect. *Appellant's Br.* at 12. The first of the listed damages was rent due for the month of August 2005 -- a month Anderson was not entitled to possession. The second was damage resulting from Anderson's failure to return the property in the condition required by the lease. This occurred when the Hastings were entitled to lawful possession of the premises and, therefore, were appropriate in the action for immediate possession. The third listed damage was limited to the Hastings's attorney fees incurred specifically for Anderson's failure to timely vacate the premises.

Based on the record before us and applicable law, the trial court's order of possession and order of damages was not clearly erroneous.

Affirmed.

RILEY, J., and FRIEDLANDER, J., concur.